

REMARKS

Summary of the Office Action

Claims 1, 2, 4-7, 9-21, 40, and 45-53 are pending in the above-identified patent application.

Claims 12 and 13 were indicated to be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims.

Claims 1, 2, 4-7, 10, 11, 14-21, 40, and 45-53 were rejected under 35 U.S.C. § 102(b) as being anticipated by Walburn et al. U.S. Patent No. 5,241,451 ("Walburn").¹ Claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Walburn in view of Baur International Patent Publication No. WO 99/43961 ("Baur").

Summary of Applicant's Reply

Applicant appreciates the Examiner's indication of allowable subject matter in claims 12 and 13, and respectfully reserves the right to rewrite the claims in independent form to include all the limitations of the base claim and any intervening claims.

Applicant has amended claims 1 and 14 to more particularly define the present invention.

A Supplemental Information Disclosure Statement is being filed concurrently herewith.

A Petition for a three-month extension of time is also being filed concurrently herewith.

The Examiner's claim rejections under sections 102 and 103 are respectfully traversed.

¹ Applicant believes that the Examiner again inadvertently cited Fink et al. U.S. Patent No. 4,728,217 ("Fink") in the section 102 rejection. Applicant believes that the Examiner is actually citing to U.S. Patent No. 5,241,451 to Walburn, as the references to the specification and figures in the Office Action match with Walburn and not Fink. Therefore, all remarks herein will be made with respect to Walburn.

The Section 102 Rejection

Applicant's amended claim 1 is directed to a connecting means for releasably fixing a first element and a second element, and applicant's amended claim 14 is directed to a method for releasably fixing a first element and a second element via a connecting means. The connecting means of claims 1 and 14 includes a locking means that is movable between a locked position and an unlocked position by a remote activation means. Applicant has amended claims 1 and 14 to clarify that there is "no physical contact" between the remote activation means and the connecting means.

The Examiner has rejected claims 1 and 14 as being anticipated by Walburn. However, Walburn neither discloses nor suggests a connecting means having a locking means movable between a locked position and an unlocked position by a remote activation means, in which there is *no physical contact* between the remote activation means and the connecting means. In particular, and as set forth by the Examiner in the Office Action, Walburn involves a "non-adhering physical contact" between connecting and activation means (Office Action, page 6, line 11). This physical contact is disclosed in the portion of Walburn cited by the Examiner: "a tool (no[t] shown) may be inserted into the access opening 42 and beneath the enlarged head 38 of the plunger 35 to lift the plunger out of the molded connector housing 10" (column 5, lines 41-45). Accordingly, Walburn fails to disclose or suggest activation of a connecting means in which there is "no physical contact," as set forth in applicant's amended claims 1 and 14.

Thus, for at least this reason, applicant's amended claims 1 and 14 are not anticipated by Walburn, and the rejection of the claims under 35 U.S.C. § 102(b) should be withdrawn. In addition, dependent claims 2, 4-7, 10, 11, 15-21, 40, and 45-53 are allowable at least because

independent claims 1 and 14 are allowable. Accordingly, the Examiner's rejections of these claims are moot and should also be withdrawn.

The Section 103 Rejection

Claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Walburn in view of Baur. Applicant respectfully submits that Baur is not available as a prior art reference under section 102, and therefore is not available for combination in a rejection under section 103.

Under 35 U.S.C. § 363, the effective date of applicant's patent application is its international filing date, March 18, 1999. According to MPEP §706.02(a)(II)(B), publications of international applications filed before November 29, 2000 do not have a 35 U.S.C. § 102(e) date at all, and are only available as prior art under 35 U.S.C. § 102(a) or (b) as of the publication date. Baur has a publication date of September 2, 1999, which falls after applicant's effective date of March 18, 1999, and therefore neither section 102(a) nor (b) are applicable. Accordingly, Baur is not prior art to this patent application, and therefore applicant respectfully requests that the section 103 rejection of claim 9 be withdrawn.

Conclusion

Applicant respectfully submits that, as described above, the cited prior art does not show or suggest the combination of features recited in the claims. Applicant does not concede that the cited prior art shows any of the elements recited in the claims. However, applicant has provided specific examples of elements in the claims that are clearly not present in the cited prior art.

Applicant strongly emphasizes that one reviewing the prosecution history should not interpret any of the examples applicant has described herein in connection with distinguishing over the prior art as limiting to those specific features in isolation. Rather, applicant asserts that

it is the combination of elements recited in each of the claims, when each claim is interpreted as a whole, which is patentable. Applicant has emphasized certain features in the claims as clearly not present in the cited references, as discussed above. However, applicant does not concede that other features in the claims are found in the prior art. Rather, for the sake of simplicity, applicant is providing examples of why the claims described above are distinguishable over the cited prior art.

Applicant wishes to clarify for the record, if necessary, that the claims have been amended to expedite prosecution. Moreover, applicant reserves the right to pursue the original subject matter recited in the present claims in a continuation application.

Any narrowing amendments made to the claims in the present Reply are not to be construed as a surrender of any subject matter between the original claims and the present claims; rather merely applicant's best attempt at providing one or more definitions of what applicant believes to be suitable patent protection. In addition, the present claims provide the intended scope of protection that applicant is seeking for this application. Therefore, no estoppel should be presumed, and applicant's claims are intended to include a scope of protection under the Doctrine of Equivalents.

Further, applicant hereby retracts any arguments and/or statements made during prosecution that were rejected by the Examiner during prosecution and/or that were unnecessary to obtain allowance, and only maintain the arguments that persuaded the Examiner with respect to the allowability of the patent claims, as one of ordinary skill would understand from a review of the prosecution history. That is, applicant specifically retracts statements that one of ordinary skill would recognize from reading the file history were not necessary, not used and/or were rejected by the Examiner in allowing the patent application.

For all the reasons advanced above, applicant respectfully submits that the rejections have been overcome and should be withdrawn.

For all the reasons advanced above, applicant respectfully submits that the application is in condition for allowance, and that such action is earnestly solicited.


Authorization

The Director is hereby authorized to charge any additional fees which may be required for this Reply, or credit any overpayment, to Deposit Account No. 08-0219.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Director is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 08-0219.

Respectfully submitted,
Wilmer Cutler Pickering
Hale and Dorr LLP

Date: March 8, 2005



Victor F. Souto
Registration No. 33,458
Attorney for Applicant
Laura A. Paquette
Registration No. 48,446
Agent for Applicant

Wilmer Cutler Pickering
Hale and Dorr LLP
Customer No. 28089
399 Park Avenue
New York, New York 10022
Tel: 212-230-8800
Fax: 212-230-8888